

AMENDED IN ASSEMBLY MAY 6, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 376**

---

**Introduced by Assembly Member Nava**

February 23, 2009

---

An act to add Division 25.8 (commencing with Section 38900) to the Health and Safety Code, relating to greenhouse gas emission offsets.

### LEGISLATIVE COUNSEL'S DIGEST

AB 376, as amended, Nava. Voluntary greenhouse gas emission offsets.

Existing law creates a statewide greenhouse gas emission limit equivalent to what the statewide greenhouse gas emissions level was in 1990, to be achieved by 2020. The State Air Resources Board is the state agency charged with monitoring and regulating sources of greenhouse gases in order to reduce emissions of greenhouse gases.

This bill would require a person selling a voluntary offset, as defined, in the state to clearly and conspicuously disclose specific information in any marketing materials for the voluntary offset. The bill, beginning January 1, 2011, would require an entity that sells a voluntary offset in the state to ensure that each voluntary offset sold has a unique serial number and is registered with and tracked by a registry, as defined. The bill would require a registry to meet certain documentation and tracking requirements. The bill, except as specified, would prohibit a person from registering a voluntary offset with more than one registry concurrently. The bill would prohibit a person from selling, allocating, awarding, transferring, or claiming a voluntary offset for retirement

more than once. The bill would authorize a person to resell a voluntary offset that has been previously sold if all rights and benefits associated with the voluntary offset are sold each time the offset is sold. The bill would subject any person who violates those provisions to a civil penalty of not more than \$10,000 for each violation.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. (a) The Legislature finds and declares all of the  
2 following:

3 (1) Global warming poses a serious challenge to public health,  
4 the environment, and the economy.

5 (2) With increasing concern regarding global warming, there  
6 has been an increase in the advertising, sale, and transfer of  
7 greenhouse gas emission reduction credits, offsets, and similar  
8 products designed to allow individuals or entities, or both, to  
9 purchase emission reduction credits in lieu of actually making  
10 those reductions themselves.

11 (3) The market for the trading of voluntary greenhouse gas  
12 emissions offsets exceeds three hundred fifty million dollars  
13 (\$350,000,000) and represents a reduction of over 70,000,000  
14 metric tons of carbon dioxide equivalents annually.

15 (4) A significant amount of retail voluntary greenhouse gas  
16 emissions offsets are purchased by California residents, businesses,  
17 and government agencies.

18 (5) Some voluntary offsets sold to retail customers are certified  
19 as being real, measurable, and verifiable. However, there are  
20 numerous public and private entities that create and certify offset  
21 projects, and these entities may apply different standards to projects  
22 with inconsistent results, generating confusion at the customer  
23 level.

24 (6) In addition, concerns have been raised about instances of  
25 potential fraud or misrepresentation in the voluntary offset market,  
26 which is difficult to address in the absence of clear standards for  
27 retail offsets.

28 (7) The purchase and sale of voluntary offsets at the retail level  
29 represents an important opportunity for all Californians to take  
30 part in projects that immediately reduce California's greenhouse

1 gas emissions and bring important additional local benefits to  
2 California communities.

3 (8) Consumers and other members of the public have few  
4 protections or standardized methods by which to ensure that they  
5 are purchasing or obtaining emission reduction credits that actually  
6 reduce greenhouse gases, reduce global warming, and improve the  
7 environment.

8 (9) The voluntary offset market will continue to grow along  
9 with the compliance market for a variety of reasons, including all  
10 of the following:

11 (A) Voluntary project protocols take less time to adopt than  
12 compliance protocols and could serve as a testing ground for  
13 compliance grade offsets.

14 (B) Voluntary credits have a lower cost than compliance offsets  
15 and offer consumers an alternative to compliance grade project  
16 prices.

17 (C) Voluntary credits offer opportunities abroad and provide  
18 access to a larger range of reductions and emission reduction  
19 projects.

20 (b) It is the intent of the Legislature to create through this act a  
21 process for ensuring that voluntary offsets sold at the retail level  
22 in California meet clear and consistent disclosure and registration  
23 standards.

24 (c) It is the further intent of the Legislature that the State Air  
25 Resources Board develop another process, independent from that  
26 created pursuant to this act, to regulate any market-based  
27 compliance mechanisms adopted pursuant to the California Global  
28 Warming Solutions Act of 2006 (Division 25.5 (commencing with  
29 Section 38500) of the Health and Safety Code).

30 SEC. 2. Division 25.8 (commencing with Section 38900) is  
31 added to the Health and Safety Code, to read:

32  
33 DIVISION 25.8. GREENHOUSE GAS EMISSION OFFSET  
34 SALES

35  
36 CHAPTER 1. GENERAL PROVISIONS

37  
38 38900. As used in this division:

39 (a) "Certification body" means any organization that does all  
40 of the following:

1 (1) Develops or adopts protocols for determining the eligibility  
2 of projects to generate greenhouse gas emission reductions.

3 (2) Develops or adopts methodologies for the quantification of  
4 the emission reductions created by offset projects.

5 (3) Sets up the verification procedures for the projects certified  
6 by the verifying organization.

7 (b) “Greenhouse gas” includes carbon dioxide, methane, nitrous  
8 oxide, hydrofluorocarbons, perfluorocarbons, and sulfur  
9 hexafluoride, and any other gases designated by the state board or  
10 Legislature that contribute to climate change.

11 (c) “Marketing materials” means promotional and informational  
12 materials that include descriptions of the voluntary offsets and can  
13 reasonably be determined to be intended to inform the consumer  
14 about available products or influence a consumer’s decision to  
15 purchase specific products, that could include, but are not limited  
16 to, promotional materials on the Internet, in brochures, and  
17 advertisements.

18 (d) “Project” refers to a greenhouse gas reduction project that  
19 reduces emissions of greenhouse gases or increases sequestration  
20 of greenhouse gases in a manner that is real, *permanent*, additional,  
21 measurable, and verifiable, and thereby creates a voluntary offset  
22 that may be sold. Projects may include, but are not limited to,  
23 forestry-based projects, methane capture and destruction projects,  
24 fuel switching projects, and stationary combustion emission  
25 reduction projects.

26 (e) “Registry” means an organization that does all of the  
27 following:

28 (1) Registers projects that generate voluntary offsets and records  
29 the type of voluntary actions generating the offset.

30 (2) Issues a unique serial number for each registered voluntary  
31 offset.

32 (3) Tracks ownership, verifies authentic origination, and records  
33 retirement of voluntary offsets.

34 (f) “Retirement” of a voluntary offset means to eliminate an  
35 offset from a registry so that no one can use, claim, or report that  
36 offset as an emission reduction.

37 (g) “State board” means the State Air Resources Board.

38 (h) “Voluntary offset” means any product sold in the state that  
39 claims to be a “greenhouse gas emission offset,” a “voluntary  
40 emission reduction,” a “retail offset,” or any like term, which

1 connotes that the product represents or corresponds to a reduction,  
2 not required by any law or regulation, in the amount of greenhouse  
3 gases present in the atmosphere or that prevents the emission of  
4 greenhouse gases into the atmosphere that would have otherwise  
5 been emitted. Voluntary offsets for the purposes of this subdivision  
6 do not include any greenhouse gas reduction measures, including  
7 voluntary greenhouse gas emission reduction measures or  
8 market-based compliance mechanisms, used to comply with  
9 greenhouse gas emission limits established by any law or  
10 regulation, including, but not limited to, limits established pursuant  
11 to the California Global Warming Solutions Act of 2006 (Division  
12 25.5 (commencing with Section 38500)), the California  
13 Environmental Quality Act (Division 13 (commencing with Section  
14 21000) of the Public Resources Code), or federal law or regulation.

15 38901. Beginning January 1, 2010, a person selling a voluntary  
16 offset in the state shall clearly and conspicuously disclose in any  
17 marketing materials for the voluntary offset all of the following:

18 (a) The geographic location of the project used to create the  
19 voluntary offset, including, but not limited to, the country of origin.  
20 If the project is located in the United States, the state or states  
21 where the emission reduction or reductions took place shall be  
22 disclosed.

23 (b) The date or range of dates that the emission reduction  
24 represented by the voluntary offset occurred or will occur.

25 (c) A brief description of the project used to create the voluntary  
26 offset.

27 ~~(d) Limitations on the permanence of the emission reductions~~  
28 ~~that correspond to the voluntary offset, including the potential for~~  
29 ~~unexpected reversal of an emission reduction, and the basis of~~  
30 ~~claims of permanence.~~

31 ~~(e)~~

32 (d) The name of the certification body or governmental entity  
33 protocol under which the voluntary offset was verified. ~~If the~~  
34 ~~voluntary offset is not verified using protocols stipulated by a~~  
35 ~~certification body or governmental entity, the seller shall clearly~~  
36 ~~and conspicuously disclose in the marketing materials that the~~  
37 ~~voluntary offset or voluntary offsets being sold are not verified~~  
38 ~~under protocols accepted by a governmental agency or certification~~  
39 ~~body.~~

40 (f)

1 (e) The name of the protocol under which the project's emissions  
2 reductions were quantified. ~~If the project's emission reductions~~  
3 ~~that produced the voluntary offset are not quantified using protocols~~  
4 ~~stipulated by a certification body or governmental entity, the seller~~  
5 ~~shall clearly and conspicuously disclose in the marketing materials~~  
6 ~~that the voluntary offset or voluntary offsets being sold are not~~  
7 ~~quantified under protocols accepted by a governmental agency or~~  
8 ~~certification body.~~

9 ~~(g)~~

10 (f) The name of the registry where the voluntary offset is  
11 registered.

12 ~~(h)~~

13 (g) Information on any significant environmental or public  
14 health impacts associated with the creation and maintenance of  
15 the voluntary offset project, including, but not limited to, impacts  
16 on species, habitat, ecosystems, land use, air quality, and water  
17 supply and quality.

18 38902. (a) *Beginning January 1, 2011, no protocol,*  
19 *certification body, or registry may be used to support a voluntary*  
20 *offset marketing claim unless it has first been validated by the state*  
21 *board, except as provided in subdivision (b).*

22 (b) *At the election of the state board, a protocol, certification*  
23 *body, or registry may be validated by the California Climate Action*  
24 *Registry established pursuant to former Chapter 6 (commencing*  
25 *with Section 42800) of Part 4 of Division 26, as effective on*  
26 *December 31, 2007.*

27 ~~38902.~~

28 38903. (a) Beginning January 1, 2011, a person who sells a  
29 voluntary offset in the state shall ensure that each voluntary offset  
30 sold has a unique serial number and is registered with and tracked  
31 by a registry.

32 (b) Every registry shall maintain documentation of the serial  
33 number assigned to each of the voluntary offsets it registers.

34 (c) Every sale of a voluntary offset for the purposes of retirement  
35 shall be reported to the registry tracking that offset's serial number,  
36 and recorded to ensure that the offset has been retired and cannot  
37 be sold again or be claimed to reduce the same emissions more  
38 than once.

1     ~~38903.~~

2     38904. (a) A person shall not register a voluntary offset with  
3 more than one registry concurrently unless the registrations are  
4 linked in a fashion that prevents simultaneous purchases and  
5 retirements of that offset. A registry may however transfer an offset  
6 to another registry.

7     (b) A person shall not sell, allocate, award, transfer, or claim a  
8 voluntary offset for retirement more than once.

9     (c) A person may resell a voluntary offset that has been  
10 previously sold if all rights and benefits associated with the  
11 voluntary offset are sold each time the offset is sold.

12     ~~38904.~~

13     38905. (a) A person shall not sell, offer for sale, advertise, or  
14 label any product in violation of this division.

15     (b) A person shall not willfully make a false statement or  
16 representation, or knowingly fail to disclose a fact required to be  
17 disclosed, or falsify or alter any document or form to misinform  
18 or mislead the public.

19     ~~38905.~~

20     38906. Nothing in this division is intended to prevent  
21 consumers from using the Consumers Legal Remedies Act (Title  
22 1.5 (commencing with Section 1750) of Part 4 of Division 3 of  
23 the Civil Code) or any other law to take action against producers  
24 or marketers of offsets, or from recovering associated court costs  
25 and attorney's fees pursuant to Section 1021.5 of the Code of Civil  
26 Procedure or any other law.

27     ~~38906.~~

28     38907. Nothing in this division is intended to alter the  
29 implementation of the California Global Warming Solutions Act  
30 of 2006 (Division 25.5 (commencing with Section 38500)) by the  
31 state board.

32  
33                   CHAPTER 2. ENFORCEMENT  
34

35     38920. (a) Any person who violates any provision of this  
36 division is liable for a civil penalty of not more than ten thousand  
37 dollars (\$10,000) for each violation.

- 1 (b) The Attorney General, a district attorney, a city attorney, or
- 2 any other state or local enforcement agency may bring a civil action
- 3 to recover civil penalties authorized by subdivision (a).

O